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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,268	08/30/2000	Frank Filser	00-497	1826

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EXAMINER

FIORILLA, CHRISTOPHER A

ART UNIT

PAPER NUMBER

1731

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/623,268

Applicant(s)

FILSER ET AL.

Examiner

Christopher A. Fiorilla

Art Unit

1731

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 14 August 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____



Christopher A. Fiorilla
Primary Examiner
Art Unit: 1731

Continuation of 5. does NOT place the application in condition for allowance because: the examiner maintains that the rejections under 35 USC 112 are proper.

Applicants state: "The article previously submitted clearly establishes that it is within the realm of the skilled artisan to be able to determine the achievable relative density of a material after sintering. This is acknowledged by the examiner on page 3 of his final rejection."

First, it is submitted that this statement mischaracterizes the examiners statements. The last sentence on page 3 of the final rejection states: "Thus, the article cannot be relied upon to establish that one of ordinary skill in the art at the time of the invention could determine the "achievable relative density after sintering" as used in the present application." The examiner compared a portion of the article to a portion of the specification to emphasize this point

The article fails to establish that it is within the realm of the skilled artisan to be able to determine the achievable relative density of a material after sintering for other reasons. First, page 3214 recites that discrepancies occur in two phase systems. Applicants claims encompass such systems. Further, page 3215 recites that the master sintering curve may not be applicable to the density range over 95%. This apparently includes densities contemplated by applicant (see page 6 of the specification).

Further, applicant states that the specification, at page 8, lines 15-18 indicates that there may be some variance in the enlargement factor however small, which would result. However, there is predictability within tolerance ranges.

This argument is not persuasive. These arguments are not commensurate in scope with the claims. The claims recite a specific formula and thus the value for "f" is defined as a specific number. There is no tolerance claimed, nor is there a specific allowability for tolerance disclosed in the specification. In fact, on page 9, of the specification the enlargement factor "f" is defined to four decimal places. Thus, it appears to be very specific.